

**IN THE HIGH COURT OF GUJARAT AT AHMEDABAD****SPECIAL CIVIL APPLICATION No. 2404 of 1999****For Approval and Signature:****HON'BLE MR JUSTICE KS JHAVERI**

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- 1 Whether Reporters of Local Papers may be allowed to see the judgment ?
  - 2 To be referred to the Reporter or not ?
  - 3 Whether their Lordships wish to see the fair copy of the judgment ?
  - 4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?
  - 5 Whether it is to be circulated to the civil judge ?

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**STATE OF GUJARAT & 1 - Petitioner(s)**  
**Versus**  
**YASINMIYA N MALEK - Respondent(s)**

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**Appearance :**

MS HANSHA PUNANI, AGP for Petitioner No(s).: 1,2.

MR RD RAVAL for Respondent No(s).: 1.

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**CORAM : HON'BLE MR JUSTICE KS JHAVERI**

**Date : 08/08/2005**

**ORAL JUDGMENT**

1. By way of this petition, the petitioners have challenged the judgment and order of the Labour Court, Himatnagar, dated 21.12.1998 whereby the Labour Court has

reinstated the respondent to his original post with continuity of service and also with full backwages.

2. The brief facts of the case are that, the respondent was working as a Daily wager as driver in the office of the Sub-Division-7, Bayad in the office of the Ex.Engineer, Vatrak Yojana, Naher Vibhag at Modasa. He filed a reference in the Labour Court, Ahmedabad being Reference (LCA) No. 1657/89 which came to be transferred on 14.7.95 to the Labour Court, Sabarkantha at Himatnagar which was given new number as Reference (LCA) No.151/96. The petitioners submitted their written statement.

3. After adjudication, the Labour Court has passed the order and award on 21.12.1998 as mentioned hereinabove

4. This Court, while admitting this matter, on stayed the order of the Labour Court qua backwages only. Subsequently, the respondent was reinstated in service. Now, the only question which is required to be considered is with regard to backwages.

5. The law on the subject is settled by the decisions of the Apex Court. In the case of Ram Ashrey Singh v.

Ram Bux Singh, reported in (2003) II LLJ 176, it is held by the Apex Court that the workman has no automatic entitlement to backwages since it is discretionary and has to be dealt with in accordance with the facts and circumstances of each case. In the case of General Manager, Haryana Roadways v. Rudhan Singh, reported in JT 2005 (6) SC 137, it is held that the order for payment of backwages should not be passed in mechanical manner but a host of factors are to be taken into consideration before passing any such order. In that view of the matter, the petition is required to be allowed in part and it is hereby partly allowed by quashing and setting aside the order qua the backwages. Rule is made absolute accordingly. No order as to costs. However, it is made clear that the workmen will be entitled to continuity of service with all consequential benefits from the date of publication of the award.

(K.S.Jhaveri, J.)

Sreeram.